

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISON**

THOMAS CIENIEWICZ,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 1:22cv172
v.	:	
	:	
DR. GHAFOURPOUR, et al.,	:	
	:	
Defendants.	:	

**MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION TO AMEND COMPLAINT**

Defendant, First Sergeant David Elliott, by counsel, hereby opposes plaintiff's Motion to Amend Complaint (Dkt. 16).

**I. INTRODUCTION**

Plaintiff filed his Complaint on February 17, 2022 alleging that medical providers at the Chesapeake City Jail denied him adequate medical care and that certain jail officers were informed of his serious medical needs but did not act (Dkt. 1). Plaintiff has now filed a "Motion to Amend" his Complaint to add Sheriff O'Sullivan as a defendant. Plaintiff, in his motion, seeks to amend his Complaint to allege that Sheriff O'Sullivan "failed to maintain proper oversight on Wellpath Medical Services". Plaintiff's proposed amendment is futile, as he fails to set forth cognizable claims that could withstand a Rule 12(b)(6) motion to dismiss. Accordingly, Plaintiff's Motion should be denied.

**II. ARGUMENT**

Fed. R. Civ. P. 15(a) provides that, "leave [to amend] shall be freely given when justice so requires." However, denial of leave to amend is appropriate when the proposed amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or

the amendment would be futile. *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4<sup>th</sup> Cir. 1999); *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4<sup>th</sup> Cir. 1986). In determining whether a proposed amendment is futile, the court may consider whether the proposed amendment can withstand a Rule 12(b) (6) motion to dismiss. See *Perkins v. United States*, 55 F.3d 910, 917 (4<sup>th</sup> Cir. 1995); *Smith v. Purnell*, No. 1:11cv922, 2011 U.S. Dist. LEXIS 141738, \* 12 (E.D.Va. Dec. 9, 2011).

Plaintiff's proposed amendment adds a supervisory liability claim against Sheriff O'Sullivan for the actions of Wellpath medical providers. There are no claims of direct involvement by Sheriff O'Sullivan in Plaintiff's medical care. Further, to establish supervisory liability under § 1983, "a plaintiff must show actual or constructive knowledge of a risk of constitutional injury, deliberate indifference to that risk, and an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff." *Carter v. Morris*, 164 F.3d 215, 221 (4th Cir. 1999). Plaintiff's Motion does not suggest that Sheriff O'Sullivan had any specific knowledge of Wellpath's care of the Plaintiff, he merely seeks to add Sheriff O'Sullivan for failure to "maintain proper oversight". Plaintiff's proposed Amendment would be futile, as it fails to state a credible claim of supervisory liability against Sheriff O'Sullivan.

Accordingly, Plaintiff should not be permitted to amend based on his proposed new allegations against Sheriff O'Sullivan.

FIRST SERGEANT DAVID ELLIOTT

By: \_\_\_\_\_/s/  
Of Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of July, 2022, I will electronically file the foregoing ***Memorandum in Opposition to Plaintiff's Motion to Amend Complaint*** with the Clerk of Court using the CM/ECF system and will mail the foregoing by U.S. Mail to the following non-filing user:

Thomas Cieniewicz #1191016  
HU7 Cell #239B  
Greensville Correctional Center  
901 Corrections Way  
Jarratt, VA 23870  
*Pro Se*

/s/

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